FARAD CONTINUATION SHEET NO.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
NAGPUR BENCH, NAGPUR

Second Appeal No. 160/2005
(Narendra Bajirao Phuse & 3 others Vs. Pandhari Bajirao Phuse & 5 others)

Appeal	District :
Application No.	of 200
Writ petition	

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's orders

Mr. Choudhari, Adv. for the appellant.

CORAM : Smt. Vasanti A. Naik, J.
DATED : 4th September, 2007.

Heard the learned counsel for the appellant.

The appellant is the original defendant no. 1. A suit was filed by the plaintiff, who is the brother of defendant nos.1 to 3, for partition and separate possession of his share in the suit property.

The defendants denied the claim of the plaintiff and pleaded that the plaintiff was not entitled to seek partition and separate possession of his share. According to the defendants, during the lifetime of Bajirao, the father of the parties, the plaintiff had got separated and he had no connection with the family. It was also pleaded by the defendants that at the most the plaintiff's share in the suit property was 1/9th and not 10/54th share as pleaded by him.

The trial and the appellate Court, however, on a consideration of the evidence on record, held that the plaintiff was entitled to 10/54th share in the suit properties. The Courts further held that the defendant no.1 had sold the orange orchards during the year 1989-90 for an amount of Rs.2,55,000/- and the plaintiff was entitled to a share in the sale proceeds. The Courts consequently granted 10/54th share in the sale proceeds.

The appellant has challenged both the judgments in the instant appeal. Mr. Choudhari, the learned counsel for the appellants, submits that both the Courts have failed to consider that the appellants had spent huge amount towards boring, purchase of fertilizers, pesticides and this fact was not considered by the Courts while granting 10/54th share in the sale proceeds to the plaintiff.

I have perused the judgments passed by the two Court and also perused the issues framed therein. Though the aforesaid issue was not framed by the trial Court, the appellant did not make a grievance before the trial Court for, framing an additional issue on the point of amount spent towards boring, purchase of fertilizers and pesticides. Even otherwise, the aforesaid submission does not give rise to any substantial question of law.

The findings recorded by both the Courts are pure findings of fact based on a proper appreciation of the material evidence on record. They do not give rise to any substantial question of law. The second appeal is, therefore, dismissed with no order as to costs.

JUDGE

APTE